

about the scheme. He also moved to have the case dismissed on the ground that the wiretapping law did not apply. He argued that because the messages had been on the hard drive of Alibris's computer while they were being processed for delivery, they counted as stored communication. The wiretap law bans a company from monitoring the communications of its customers, except in a few cases. But it does not ban a company from reading customers' stored communications.

"Congress recognized that any time you store communication, there is an inherent loss of privacy," said Mr. Councilman's lawyer, Andrew Good of Good & Cormier in Boston.

In 2003, a Federal district court in Boston agreed with Mr. Councilman's interpretation of the wiretap law and dismissed the case. Last week, the First Circuit Court of Appeals, in a 2-to-1 decision, affirmed that decision.

Because most major Internet providers have explicit policies against reading their customers' e-mail messages, the ruling would seem to have little effect on most people.

But this year Google is testing a service called Gmail, which electronically scans the content of the e-mail messages its customers receive and then displays related ads. Privacy groups have argued that the service is intrusive, and some have claimed it violates wiretap laws. The Councilman decision, if it stands, could undercut that argument.

Federal prosecutors, who often argue that wiretap restrictions do not apply in government investigations, were in the somewhat surprising position of arguing that those same laws should apply to Mr. Councilman's conduct. A spokesman for the United States attorney's office in Boston said the department had not decided whether to appeal.

Mr. Baker said that another Federal appeals court ruling, in San Francisco, is already making it hard for prosecutors to retrieve e-mail that has been read and remains on an Internet provider's system.

In that case, *Theofel v. Farey-Jones*, a small Internet provider responded to a subpoena by giving a lawyer copies of 339 e-mail messages received by two of its customers.

The customers claimed the subpoena was so broad it violated the wiretap and stored communication laws. A district court agreed the subpoenas were too broad, but ruled they were within the law. The plaintiffs appealed, and the Justice Department filed a friend of the court brief arguing that the Stored Communications Act should not apply.

In February, the appeals court ruled that e-mail stored on the computer server of an Internet provider is indeed covered by the Stored Communications Act, even after it has been read. The court noted that the act refers both to messages before they are delivered and to backup copies kept by the Internet provider. "An obvious purpose for storing a message on an I.S.P.'s server after delivery," the court wrote, "is to provide a second copy of the message in the event that the user needs to download it again—if, for example, the message is accidentally erased from the user's own computer."

Calling e-mail "stored communication" does not necessarily reduce privacy protections for most e-mail users. While the Councilman ruling would limit the applicability of wiretap laws to e-mail, it appears to apply to a very small number of potential cases. The Theofel decision, by contrast, by defining more e-mail as "stored communications," is restricting access to e-mail in a wide range of cases in the Ninth Circuit, and could have a far greater effect on privacy of

courts in the rest of the country follow that ruling.

## ADDITIONAL STATEMENTS

### IBM AND THE RESEARCH TRIANGLE PARK

• Mrs. DOLE. Mr. President, when IBM joined the Research Triangle Park as its first major tenant in 1965, this company helped establish the Research Triangle Park as the premier technological, biotech, and economic development powerhouse for North Carolina.

Today I thank and congratulate IBM for its decades of support and investment in the Research Triangle Park and the surrounding communities in North Carolina. As the largest employer in the Triangle Park, IBM is an excellent example of corporate citizenship that provides dependable, high-paying jobs in both the area and worldwide.

With over 13,000 jobs in the Triangle Park alone, the largest concentration of IBM jobs worldwide, IBM uses the graduates and resources from the State's extensive college and university system. IBM invests in our State by helping to keep North Carolina talent at home.

Please join me and other North Carolina leaders in congratulating IBM on its commitment to build a better company for our region and wishing IBM and the Research Triangle Park ongoing success as they broaden their partnership with the people of my home State. •

## MESSAGE FROM THE HOUSE

At 3:02 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 4754. An act making appropriations for the Department of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 2005, and for other purposes.

## MEASURES REFERRED

The following bill was read the first and the second times by unanimous consent, and referred as indicated:

H.R. 4754. An act making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 2005, and for other purposes; to the Committee on Appropriations.

## MEASURES PLACED ON THE CALENDAR

The following bills were read the second time, and placed on the calendar:

S. 2629. A bill to amend the Medicare Prescription Drug, Improvement, and Mod-

ernization Act of 2003 to eliminate the coverage gap, to eliminate HMO subsidies, to repeal health savings accounts, and for other purposes.

S. 2630. A bill to amend title 5, United States Code to establish a national health program administered by the Office of Personnel Management to offer Federal employee health benefits plans to individuals who are not Federal employee, and for other purposes.

S. 2631. A bill to require the Federal Trade Commission to monitor and investigate gasoline prices under certain circumstances.

S. 2632. A bill to establish a first responder and terrorism preparedness grant information hotline, and for other purposes.

S. 2633. A bill to amend the Federal Power Act to provide refunds for unjust and unreasonable charges on electric energy in the State of California.

## REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. ROBERTS, from the Select Committee on Intelligence:

Special Report entitled "Report of the Select Committee on Intelligence on the U.S. Intelligence Community's Prewar Intelligence Assessments on Iraq" (Rept. No. 108-301). Additional views filed.

## INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred to as indicated:

By Mr. LEAHY:

S. 2636. A bill to criminalize Internet scams involving fraudulently obtaining personal information, commonly known as phishing; to the Committee on the Judiciary.

By Mr. GRAHAM of South Carolina:

S. 2637. A bill to amend the National Labor Relations Act to ensure the right of employees to a secret-ballot election conducted by the National Labor Relations Board; to the Committee on Health, Education, Labor, and Pensions.

## SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. HARKIN (for himself, Mr. COCHRAN, Mr. ROBERTS, Mr. DASCHLE, Mr. CRAPO, Mr. FITZGERALD, Mr. CONRAD, Mr. COLEMAN, Mr. LEAHY, Mrs. LINCOLN, Mr. KOHL, Mrs. CLINTON, Mr. JOHNSON, Mr. DORGAN, Mr. LUGAR, and Mr. DAYTON):

Res. 402. A resolution expressing the sense of the Senate with respect to the 50th anniversary of the food aid programs established under the Agricultural Trade Development and Assistance Act of 1954; considered and agreed to.

By Ms. SNOWE (for herself, Mr. MCCAIN, Mr. HOLLINGS, Mr. DODD, Mr. KENNEDY, Mr. CHAFEE, Mrs. BOXER, Mrs. COLLINS, Mr. FITZGERALD, Mr. REED, Mr. CORZINE, Mr. JEFFORDS, Mr. WYDEN, Mr. BIDEN, and Mr. LIEBERMAN):

S. Con. Res. 122. A concurrent resolution expressing the sense of the Congress regarding the policy of the United States at the